


Non-Executive Report of the: Licensing Committee 14 th December 2017	 TOWER HAMLETS
Report of: David Tolley, Head of Environmental Health and Trading Standards Directorate of Place	Classification: [Unrestricted]
London Local Authorities Act 1991 Application for a New Special Treatment Licence for Relax Studio, Unit 2, 1 Gunthorpe Street, E1 7RG	

Originating Officer(s)	Charlotte Basten Environmental Health Officer
Wards affected	Spitalfields and Banglatown

1. Summary

Applicant: **Mr Wai Ming Yau**

Name and Address of Premises: **Relax Studio
Unit 2, 1 Gunthorpe Street
London
E1 7RG**

Licence sought: **Special Treatment Licence under The London Local Authorities Act 1991 Application for a new Special Treatment Licence**

Objectors: **Environmental Health- Licensing and Safety**

2. Recommendations:

The Licensing Committee is recommended to consider the application and objections then adjudicate accordingly.

3. Background

- 3.1 This is an application made on the 28th September 2017 by Mr Wai Ming Yau for a new special treatment licence under Section 6 (2) of the London Local Authorities Act 1991 for Relax Studio, Unit 2, 1 Gunthorpe Street, E1 7RG. A copy of the application can be found at **appendix 1**.
- 3.2 A licence from the Council is required for the use of a premises as an establishment for special treatments. An establishment for special treatment is defined in the Act as any premises in the borough used, intended to be used or represented as being used for the reception or treatment of persons requiring massage, manicure, acupuncture, tattooing, cosmetic piercing, chiropody, light, electric or other special treatment of a like kind or vapour, sauna or other baths.
- 3.3 Planning permission is granted for the use of the premises as *sui generis* with operating hours from 08:00 until 20:00.
- 3.4 The current application is to permit the premises to operate as an establishment for special treatments offering Massage.

4. Legal Powers and Advice

- 4.1 Licences are granted subject to standard conditions.
- 4.2 The Standard Conditions of the London Borough of Tower Hamlets made under the London Local Authorities Act 1991, Section 10 (1). It is the duty of any licence holder to be aware of and abide by those conditions. A copy of the standard conditions can be found at **Appendix 2**.
- 4.3 The council has made Regulations for annual special treatment licences under section 10 (1) of the London Local Authorities Act 1991. These are available as **Appendix 3**.
- 4.4 Under the London Local Authorities Act 1991 the borough may refuse to grant a licence on the following grounds
 - (a) the premises are not structurally suitable for the purpose;
 - (b) there is a likelihood of nuisance being caused by reason of the conduct, management or situation of the premises or the character of the relevant locality or the use to which any premises in the vicinity are put;
 - (c) the persons concerned or intended to be concerned in the conduct or management of the premises used for special treatment could be reasonably regarded as not being fit and proper persons to hold such a licence;
 - (d) the persons giving the special treatment are not suitably qualified;
 - (e) the premises have been or are being improperly conducted;

- (f) the premises are not provided with satisfactory means of lighting, sanitation and ventilation;
- (g) the means of heating the premises are not safe;
- (h) proper precautions against fire on the premises are not being taken;
- (i) they are not satisfied as to the safety of equipment used in the special treatment or as to the manner in which the treatment is to be given;
- (j) they are not satisfied as to the safety of the special treatment to be given;
- (k) satisfactory means of escape in case of fire and suitable means for fighting fire are not provided on the premises;
- (l) the applicant has, within the period of five years immediately preceding the application to the borough council, been convicted of an offence under this Part of this Act;

4.5 Legislation provides that where an applicant is aggrieved at the Council refusing to grant, or renew a licence or at any condition or restrictions imposed, the applicant may within twenty one days of being notified of the Council's refusal, appeal to a Magistrates Court. The Court may grant an order for the issue of a licence or may remove any condition or restriction imposed. Should the applicant still feel aggrieved at the Court's decision there is a right of appeal to the Crown Court.

5 Consultation

- 5.1 The application has been consulted on in accordance with the London Local Authorities Act 1991. This has included:
- 5.2 A site notice at the premises displayed by the applicant during the required period.
- 5.3 A press advert was placed in the Docklands and East London Advertiser on the 12TH October 2017, by the applicant.
- 5.4 The following is a list of those also consulted in regards to the application:

The Police
The Fire Brigade
Environmental Health

6 Objections/Responses to the Consultation

- 6.1 The Environmental Health – Licensing and Safety Team are objecting to the new application on the grounds that the premises have been or are being

improperly conducted. Please see **Appendix 4**. The objections have already been made available to the licence holder's legal representative and will also be made available to Members. The objections are due to the following reasons:

- Evidence gained from Test Purchase visits on the 23rd June 2017 and the 27th June 2017 and which showed that services of a sexual nature were being offered at the premises in return for money.
- Evidence from visits to the premises have revealed that the premises was open and advertising as an establishment for special treatments with no licence in place after 30th August 2017 when exemption was revoked.
- Several complaints from a member of the public regarding the premises being open and advertising as an establishment for special treatments with no licence in place after 30th August 2017 when exemption was revoked and open beyond permitted hours.

6.2 The Fire Brigade were consulted, please find below a summary of their comments.

- None, no response received.

6.3 The police were consulted, please find below a summary of their comments.

- None, no response received.

6.4 Local residents, please find below a summary of their comments.
See Environmental Health objection above.

7 Environmental Health Recommendations Following Consultation

7.1 Following objection from the Environmental Health, Licensing and Safety Team including complaints from a local resident, Members are asked to consider the representations when determining the new application.

8 Summary of Premises and Licence History

8.1 Special treatment establishments do not require a license in the Borough of Tower Hamlets if they are members of a bona fide body of health practitioners listed on the document *list of bodies of health practitioners granted exemption by the London Special Treatments Group under the London Local Authorities Act 1991*. This can be found at **appendix 5**.

8.2 The premises was formally exempted from Licensing under the London Local Authorities Act 1991. Exemption was granted as treatments were being carried out by Ms Chak Wa Yiu. Ms Chak Wa Yiu was a member of a body of health practitioners that has an exemption from the special treatment licensing regime under Section 4,b (ii) of the London Local Authorities Act.

- 8.3 Test purchases revealed that services of a sexual nature were being offered to customers on the premises.
- 8.4 The exempted body- Independent Professional Therapists International (IPTI) was informed of the test purchases. The IPTI then cancelled Ms Chak Wa Yiu's membership from the 30th August 2017.
- 8.5 The manager of the premises was informed that they must stop trading as a special treatment establishment as they were no longer exempt from the licensing regime and did not have a license.
- 8.6 The premises continued to trade and advertise as a special treatment establishment without a license.

9 Complaints and Enforcement History

- 9.1 The premises has received the following complaints in the last 24 months: It should be noted that these complaints are from one source.

Date	Complainant	Nature of Complaint
30/03/2016	Member of The Public	Allegation that massage premises is open outside of hours permitted by planning permission- at 20:27 30.03.2016.
6/4/2016	Member of the Public	Allegation that massage premises is open outside of hours permitted by planning permission- at 20:27 evening 30/3/2016.
01/07/2016	Member of The Public	Email including an allegedly illegally placed A board and a handwritten sign on the A board allegedly saying in Cantonese <i>Bold Black Chinese: Go to hell, I will check CCTV (to find out who). Then I will have a gangster kill all your family.</i> <i>Blue Chinese: Mother F**ker, you are always messing with my message board. (If i don't get back at you), I am not my mother's son.</i>
30/05/2017	Member of the public	Email notification that premises was operating without a licence.
14/09/2017	Member of the public	Email notification regarding a discussion about the premises on the website FBSM (full body sensual massage).
15/09/2017	Member of the public	Email notification that premises was operating without a licence at 21:24 on 14/09/2017

26/09/2017	Member of the public	Photograph showing the premises open at 20:15 on the 25/9/2017
26/09/2017	Member of the public	Photograph showing the premises open at 20:43
28/09/2017	Member of the public	Photograph showing the premises open at 20:22
7/10/2017	Member of the public	2 photographs showing the premises advertising special treatments without a licence.
8/10/2017	Member of the public	Photograph showing the premises advertising special treatments without a licence
8/10/2017	Member of the public	Photograph showing the premises open at 20:15 and a male walking in.
10/10/2017	Member of the public	Photograph showing the premises open at 17:25 and male customer walking in.
10/10/2017	Member of the public	Photograph showing the premises with an open sign at 21:00. However lights in the reception area are switched off.
11/10/2017	Member of the public	Email notification that the premises was still advertising special treatments online
11/10/2017	Member of the public	Photograph showing the premises open and open sign in door at 20:30
12/10/2017	Member of the public	Photograph showing the premises open and open sign in door at 21:17.
15/10/2017	Member of the public	Photograph showing the premises open and open sign in door at 21:01
16/10/2017	Member of the public	Photograph showing the premises open and open sign in door at 20:43
17/10/2017	Member of the public	Email with picture of a price list on the front desk of the premises.
21/10/2017	Member of the public	Photograph showing the premises displaying a foot reflexology poster.
21/10/2017	Member of the public	Email including screenshot of advertisement on gumtree for massage.
22/10/2017	Member of the Public	Photograph of Ms Chak Wa Yiu touching the shoulders of a male outside of the premises.

22/10/2017	Member of the public	Photograph of the premises with lights on and open sign in door at 20:33.
25/10/2017	Member of the public	Photograph of the premises with lights on and open sign in door at 20:33.
25/10/2017	Member of the public	Photograph of the premises with lights on and door open at 20:54.
26/10/2017	Member of the public	Photograph of the premises with lights on and open sign in door at 20:36.
29/10/2017	Member of the public	Photograph of the premises with lights on and open sign in door at 20:49.
01/11/2017	Member of the public	Photograph of the premises with lights on and open sign in door at 20:30.
2/11/2017	Member of the public	Photograph of the premises with lights on and open sign in door at 20:32.
5/11/2017	Member of the public	Photograph of the premises with lights on and open sign in door at 21:05.
8/11/2017	Member of the public	Email detailing online advert for the premises at the web address posted 4/11/2017
9/11/2017	Member of the public	Photograph of the premises with lights on and open sign in door at 20:38.

9.2 The premises has received the following visits and related correspondence from the Local Authority in the last 24 months:

Date	Authority	Nature of visit
4/4/2016	Licensing and Safety	Visit following referral from Trading Standards that premises was operating as a special Treatment establishment without a licence. Therapist provided proof of membership with an exempted body (IPTI).
20/04/2016	Planning	Email correspondence to Mr Wai Ming Yau detailing planning requirements. Email chain from planning to landlord of premises and from landlord to Mr Wai Ming Yau at email address yau83@hotmail.com.
3/8/2016	Licensing and Safety	Visit following a complaint about an offensive A board outside of premises also to check that there are no therapists working at the premises that are

		not already exempt. At time of visit only exempt therapist – Ms Chak Wa Yiu was working at the premises.
30/5/2017	Licensing and safety	Visit following notification of unlicensed premises. Provided info on their exemption.
15/08/2017	Licensing and Safety	Visit to premises to check therapist working at premises was still Chak Wa Yiu following receipt of witness statements from test purchase visits.
08/09/2017	Licensing and Safety	Email correspondence with Mr Wai Ming Yau informing him that the premises Relax Studio, Unit 2, 1 Gunthorpe Street, London, E1 7RG would not be considered for exemption from the special treatment licensing regime.
20/09/2017	Licensing and Safety	Visit to premises to check compliance with London Local Authorities Act 1991 as premises no longer exempt from licencing regime and has no licence in place. There were special treatments being advertised in the shop window and on the reception counter on the price list. The treatment rooms were unoccupied but they were set up for possible treatments and baby oil was in the room. Report left on site.
09/10/2017	Licensing and Safety and Police	Joint visit between environmental Health and police officers to check licensing non conformity's. Ms Chak Wa Yiu was at the premises. The premises was advertising massage and reflexology. Posters up in window advertising massage and price list at front of premises with massage in price list.
1/11/2017	Licensing and Safety	<p>Inspection of premises for new special treatment licence. The Applicant- Mr Wai Ming Yau and Ms Chak Wa Yiu were both present. The following issues were noted at the time of the visit.</p> <ol style="list-style-type: none"> 1. They are using baby oil for massage and no other massage oils. 2. A number of perfume/ deodorant sprays in use, apparently because clients have body odour 3. No lidded bins 3. Some light bulbs are not working. 4. No waste contract 5. No first aid kit.

- 9.3 The premises has been subject to the following enforcement action in the last 12 months:

Date	Authority	Nature of Enforcement
21 st October 2017	Planning Enforcement	Enforcement notice issued for change of use to <i>Sui Generis</i> . This was appealed by the Owner. See appendix 6 for a statement of enforcement actions from Planning Enforcement.
Due to be served November 2017 (correct at time of report)	Planning Enforcement	Breach of condition Notice for operating outside permitted hours (8:00 to 20:00)

10 Special Treatment Licenses and Determination

- 10.1 Members should consider the relevant legislation and Standard Conditions (see **Appendix 2** and **Appendix 3** respectively).

11 COMMENTS OF THE CHIEF FINANCE OFFICER

- 11.1 [Financial implications to be prepared by Directorate Finance Manager and agreed with Corporate Finance]

12 LEGAL COMMENTS

- 12.1 This report is asking the Licensing Committee to consider an application for a new Special Treatments Licence at premises trading as Relax Studio at Unit 2, 1 Gunthorpe Street, London, E1 7RG. Such licences are granted in accordance with Part II of the London Local Authorities Act 1991. Mr Wai Ming Yau is the applicant for the licence.
- 12.2 There is only one objection to grant of the licence and it is made by the Council's Health and Safety Team who state that the premises have been or are being improperly conducted. In that regard, section 8 of the 1991 Act sets out the various grounds of potential refusal for the licence. The relevant grounds with regards to improper conduct is set out in paragraph (e) of section 8. This provides that the Council can refuse where the premises have been or are being improperly conducted.
- 12.3 The rules governing applications for Special Treatments Licences are contained with the introductory papers to this report. Members are also advised that these proceedings must comply with Article 6(1) of the European

Convention of Human Rights. This is an 'absolute' right and provides that '*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*'

- 12.4 As to what is a 'fair hearing' before an 'independent and impartial tribunal', the rules of natural justice would apply. There are two principles to the rules of natural justice. Firstly, all parties must be given a chance to put their case and under conditions that do not put one party at a substantial disadvantage to the other party. This means that all parties should be given sufficient notice of the hearing. The applicant should have disclosure of the nature of the objections as well as who is objecting. This includes the right to cross-examine witnesses.
- 12.5 Secondly, a person who has an interest in a matter must be disqualified from considering it. In essence there can be no objective or subjective bias. In considering this both the European Courts and the English Courts have held that it is not necessary to show that there was actual bias but that a person could perceive that bias might have taken place. This means that it is not necessary to show that there was actual bias but that a reasonable person could perceive that bias might have taken place. In essence therefore, if a person from the outside looking in can perceive that bias might have taken place then there has been a breach of natural justice and therefore a breach of Article 6. Accordingly the Committee must be impartial both subjectively, the lack of actual bias, and objectively, the lack of appearance of bias.
- 12.6 If a Member therefore considers that they have an interest then they should declare it and not participate in the meeting. This would include retiring with Members when determining whether or not to grant the licence.
- 12.7 The Committee meeting should be in public except that Members can retire in private when considering their decision. Once the decision has been reached then the decision is to be given in public and the Committee should also give reasons for its decision.

13 Appendices

Appendix 1	A copy of application for a new special treatment licence.
Appendix 2	A copy of the standard conditions for special treatment licences.
Appendix 3	Regulations for annual special treatment licences under section 10 (1) of the London Local Authorities Act 1991

Appendix 4	Representation of Environmental Health (Licensing and Safety Team)
Appendix 5	list of bodies of health practitioners granted exemption by the London Special Treatments Group under the London Local Authorities Act 1991.
Appendix 6	Planning enforcement statement of enforcement action.

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- NONE.